

REMARKS

The present invention relates to what is popularly known as “rebates,” or “rebate marketing”, i.e., a marketing promotion of a specific product/service in which a purchaser of that product/service is required to provide some information to obtain something of value at time subsequent to the purchase transaction. Typically, the promotional offer is made by a manufacturer or retailer and is directed to the retail purchaser who must at a time subsequent to the purchase transaction provide information to the entity responsible for fulfillment, who will in turn verify the promotion and transfer the value to the purchaser.

As used in this application, the benefit or value in a “rebate” is not received at the time and point of purchase. Reductions in price received at the point of sale are simple price reductions, e.g. , the use of a loyalty card at a grocery chain produces at the point of sale an immediate price discount on all product/services included in a purchase transaction. It is a characteristic of rebate marketing that the value received by the purchaser (e.g., the ultimate consumer, retailer, wholesaler or distributor) regardless of its form (e.g., cash, credit or merchandise) be received subsequent to the purchase transaction. Point-of-sale price reductions are not “rebates”.

However, delay in receiving the value or benefit is not enough to make a marketing promotion a rebate, and it is another characteristic of rebate marketing that something from the purchaser is required to trigger the transfer of the value or benefit. Typically, the purchaser is required to provide information as to the identify of the purchaser and the identity of a specific product/service purchased with which a rebate offer or promotion has been associated by the retailer, manufacturer or other merchandising entity. If the act of purchase, by itself, is sufficient to effect the transfer of a benefit or value to the purchaser without some additional act by the purchaser either before or subsequent to the purchase, such marketing is not rebate marketing.

A further characteristic of rebate marketing is the rebate offer or promotion offer is limited to selected ones of the product/services offered by the merchandising entity, i.e., not all groceries, not all credit card purchases, and not all airline tickets. Thus, even though the actual award ticket or credit card award is received subsequent to the time and point of sale, the crediting of miles or points to a frequent flyer or credit card program at the point of sale is not a “rebate”.

The prior art method disclosed in the previously cited patent to Finsterwald is directed to a rebate system and thus has several steps common with the rebate methods disclosed in the present application. However, there are significant differences between the rebate methods herein claimed and those disclosed by Finsterwald.

One of these significant differences is that Finsterwald assigns a unique code to each product/service with which a promotion or rebate offer is associated (i.e., a “product code”), and the purchaser is required to identify that product code as part of the proof of purchase needed to receive the value. As stated by Finsterwald:

Abstract

[P]roducts ...are respectively provided with an individual code and the [individual product] code is transmitted by the customer ...to a data collecting station.

SUMMARY OF THE INVENTION

[P]roducts ...are in each case provided with an individual code and the [individual product] code is transmitted by the customer ...to a data collecting station...(col. , lines).

[T]he customer is asked ,...,to feed in the code associated with the [individual] product or service... (col. , lines).

In contrast, and by way of example only, Claim 3 expressly provides that “the act by the purchaser is independent of the identification of the product code associated with any of the product/services purchased in the purchase transaction. “

There are several important ramifications in the prior art use of product codes to request a rebate. For example, if multiple units of a product/service with which a rebate are purchased in a single purchase transaction, the customer is required by Finsterwald to separately communicate with the data collecting station or fulfillment entity with respect to each of the units purchased. In other words, each purchase of a product/service with which a promotion is associated is treated as a separate “rebate” transaction.

In contrast, the identification of the purchase transaction by the customer, rather than the plurality of individual product/services contained within the purchase transaction, provides significant benefits. Among these benefits is that the amount of data which must be transferred and processed is reduced, greater participation by purchasers can be expected where the submission is made easier, there is inherently less opportunity for error in the communication of less data, processing time is reduced, and the processing of less data per purchaser submission increases the capacity of the data processing system, all of which can be expected to increase user satisfaction and reduce the cost of the program.

None of the deficiencies of Finsterwald are obviated by the previously cited Fajkowski. As acknowledged by the examiner in the parent application:

“Fajkowski teaches a system ... [which] indicates if a manufacturer rebate exists for any of the purchased products. This rebate system allows the consumer to **instantly** receive credit for rebates...” (Office Action 5/15/2003; p. 4, emphasis supplied).

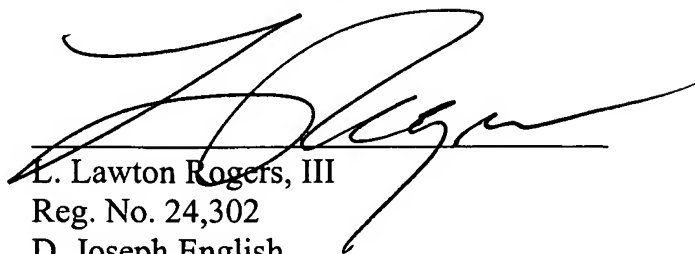
As the examiner has correctly pointed out, the credit provided by Fajkowski is instant at the time and place of purchase and does not require a subsequent act by the purchaser nor provide delayed gratification characteristic of a “rebate”. Thus, Fajkowski discloses only a point of sale price reduction system and is not a “rebate” system as that term is understood in the trade and used in the present application.

As discussed in the interview leading to the allowance of the parent application, the ultimate value to the purchaser in reducing cost may be the same in these two very diverse systems. Nonetheless, and as readily acknowledged by the examiner and his Primary Examiner at the interview, none of the marketing objectives of a rebate system are achieved by Fajkowski and none of the processing disclosed by Finsterwald is necessary in the Fajowski system. Thus, there is no reason for one of skill in the rebate art to look to a point of sale price reduction system for relevant teachings. *A fortiori*, there is no teaching in either Finsterwald or Fajkowski of such combination. There is clearly no factual basis for seeking to combine bits and pieces of these two very diverse systems, or other similar systems, except possibly in the impermissible hindsight application of the teaching of this application.

Clearly Fajkowski does not obviate the deficiencies of Finsterwald in that Fajkowski is a point of sale price reduction system rather than a rebate system. Clearly, any conventional inventory tracking system makes it possible to develop market information about the customer from a list of the product/services actually purchased with a customer identifying credit of affinity card. However, Since the customer does not have to do any act to effect receipt of the value of the promotion, systems such as disclosed in either Finsterwald or Fajkowski do not provide any information as to the motivation of the customer in purchasing one or more of the product/services with which a promotion is associated.

In the absence of the citation of additional prior art, this continuation application is believed to be in condition for allowance.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "L. Lawton Rogers, III", is written over a horizontal line.

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